

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC-SDNY  
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DATE FILED: 12/5/13

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FLORENTINO MELGADEJO, *on behalf of*  
*himself and others similarly situated,*

Plaintiff,

-v-

S & D FRUITS & VEGETABLES INC., et al.,

Defendants.  
-----X

No. 12 Civ. 6852 (RA) (HBP)

ORDER ADOPTING REPORT AND  
RECOMMENDATION

RONNIE ABRAMS, United States District Judge:

By notice of motion dated April 30, 2013, Plaintiff sought, among other relief, certification of his claims under the New York Labor Law ("NYLL") as a class action pursuant to Federal Rule of Civil Procedure 23(b)(3). (Dkt. 34.) On November 7, 2013, Magistrate Judge Pitman, to whom this matter was referred for disposition of Plaintiff's motion, issued an Opinion and Order resolving all aspects of Plaintiff's motion seeking non-dispositive relief and a Report and Recommendation ("Report") recommending denial of Plaintiff's application for class certification of his NYLL claims. No party has filed objections to the Report.

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by [a] magistrate judge." 28 U.S.C. § 636(b)(1). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985).

As no objections have been filed, the Court has reviewed Judge Pitman's well-reasoned

Report for clear error and finds that there is no clear error on the face of the record.

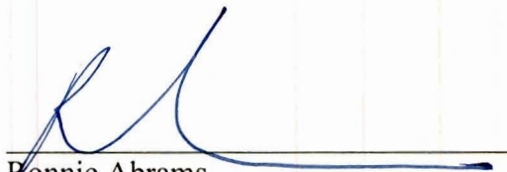
Accordingly, Plaintiff's application to certify his claims under the NYLL as a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) is denied. As Judge Pitman warned, the parties' failure to file written objections to the Report precludes appellate review of that decision. See, e.g., McCarthy v. Manson, 714 F.2d 234, 237 (2d Cir. 1983) ("When a party fails to object timely to a magistrate's recommended decision, it waives any right to further judicial review of that decision.")

In light of this ruling, Plaintiff is directed to submit a revised proposed default judgment consistent with this Order by December 19, 2013.

The Clerk of Court is respectfully directed to close item number thirty-four (34) on the docket.

SO ORDERED.

Dated: December 5, 2013  
New York, New York



Ronnie Abrams  
United States District Judge